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10 **IN THE UNITED STATES DISTRICT COURT**
11 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
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13 ELITEGROUP COMPUTER SYSTEMS,
14 INC., a California corporation,

15 Plaintiff,

16 vs.

17 EULER HERMES AMERICAN CREDIT
18 INDEMNITY COMPANY, a Maryland
19 corporation, and Does 1 through 20,
inclusive,

20 Defendants.
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Case No. C09 00110 JW PVT
The Honorable Lucy Koh

STIPULATION AND ~~PROPOSED~~
ORDER RE: WITHDRAWAL OF
PLAINTIFF'S TERRA, RBC, AND
INTERNATIONAL PORTION OF SR
AMERICA CLAIMS

1 Plaintiff Elitegroup Computer Systems, Inc. ("Elitegroup") and Defendant Euler
2 Hermes American Credit Indemnity ("Euler") (jointly, the "Parties") make the following
3 Stipulation, subject to approval of this Court:
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5 WHEREAS, on January 9, 2009, Elitegroup filed its Complaint against Euler,
6 which asserted causes of action for breach of contract, breach of the implied covenant of
7 good faith and fair dealing, and declaratory relief against Euler based on Euler's denial of
8 five claims submitted by Elitegroup under the Euler insurance policy, effective January 1,
9 2008 (the "Policy"), for the following buyers: (1) Flex Importacao Exportacao (the
10 "Flex" claim); (2) Soluciones Integrales Corporation (the "SICSA" claim); (3) Terra
11 Industria da Amazonia Ltd (the "Terra" claim); (4) RBC Industria de Computadores (the
12 "RBC" claim); and (5) SR America, LLC (the "SR America" claim).
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14 WHEREAS, it is the Parties' intent in entering into this Stipulation to remove from
15 this action Elitegroup's (a) Terra claim, (b) RBC claim, and (c) SR America claim to the
16 extent the SR America claim concerns goods shipped to locations outside of the United
17 States (the "International SR America claim"). The Parties intend to remove the Terra,
18 RBC, and International SR America claims because they are the subject of ongoing and
19 unresolved insolvency proceedings in Brazil and thus are not ripe for adjudication.
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21 NOW THEREFORE, the Parties hereby agree and stipulate as follows:

22 1. Elitegroup's Terra claim (referenced in paragraph 15 of the Complaint),
23 RBC claim (referenced in paragraph 15 of the Complaint), and International SR America
24 claim (referenced in paragraph 16 of the Complaint) are deemed withdrawn from the
25 Complaint without prejudice.

26 2. In conjunction with the withdrawal of Elitegroup's Terra, RBC, International
27 SR America claims, the Parties agree that commencing as of January 9, 2009 (the date
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1 this action was filed) and extending through to the Termination Date (as defined below),
2 the respective rights, claims, causes of action, and/or defenses that the Parties have in
3 connection with the Terra, RBC, and International SR America claims that existed as of
4 January 9, 2009 shall be fully preserved. The Parties further agree that during the time
5 period from January 9, 2009 to the Termination Date, the running time under any
6 applicable statute of limitations, or under any theory of estoppel, waiver, and/or any other
7 time-related defense or right, shall be tolled as to both Parties (the "Tolling Provision").
8 The Tolling Provision does not apply to rights, claims, causes of action, and/or defenses
9 that did not exist as of January 9, 2009.

10 3. Either Party may terminate the Tolling Provision of this Stipulation and
11 Order by providing the other Party with written notice of its intent to terminate the
12 Tolling Provision. If such notice is provided, the Tolling Provision shall terminate 60
13 days after the service of such notice (the "Termination Date"). Alternatively, the
14 Termination date shall be triggered upon execution of a settlement agreement by the
15 Parties that expressly supersedes this Stipulation.

16 4. The Parties further agree that Elitegroup's withdrawal of the Terra, RBC,
17 and the International SR America claims from the Complaint does not constitute a
18 withdrawal of such claims under section V of the Policy and shall not otherwise be
19 deemed a failure by Elitegroup to comply with the Claim Filing requirements set forth in
20 section V(A)(1) of the Policy nor the litigation commencement requirements of section
21 X(D) as to such claims.

22 5. This Stipulation and Order shall not be construed as an admission of any
23 facts or any liability by the Parties.

24 6. This Court shall retain jurisdiction to enforce the terms of this Stipulation
25 and Order.
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1 7. This Stipulation and Order may be executed in counterparts and via
2 facsimile or email with the same force and effect as if executed in one complete
3 document.

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6 Dated November 12, 2010

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8 By: 

Shawn T. Leuthold

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10 Attorneys for Plaintiff
Elitegroup Computer Systems, Inc.

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13 Dated: November 12, 2010

DEWEY & LEBOEUE LLP

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15 By: 

Dean Hansell
Ian C. Eisner

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17 Attorneys for Defendant
Euler Hermes American Credit Indemnity Company

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23 IT IS SO ORDERED

24
25 Dated: November 12, 2010



Hon. Lucy Koh